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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 08 2003

FILE: [redacted] Office: Vermont Service Center Date:
EAC 02 116 51212

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Dominican Republic, as the fiancee of a United States citizen, pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(K).

The director determined that the petitioner failed to submit evidence, as had been requested, to establish eligibility. The director, therefore, denied the petition.

On appeal, the petitioner states that he is in disagreement with the decision to deny the petition because he submitted the requested evidence well within the allowed time. He submits additional evidence.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

> An alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancee or fiance accompanying him or following to join him.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiance(e) petition:

> shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

The record reflects that the petition was filed with the Service on February 3, 2002. In a notice of intent to deny dated April 12, 2002, the director noted that, based on the marriage certificate, the petitioner and the beneficiary were married on October 12, 2001. Therefore, the beneficiary cannot be classified as the petitioner's fiancee for immigration purposes. The petitioner was informed that it appeared the petitioner may be seeking to obtain K-3/K-4 status for the beneficiary under the recently enacted LIFE Act. However, before a Form I-129F fiancee petition can be filed to establish eligibility for the K-3/K-4 visa, the petitioner must have filed an I-130 alien relative petition on behalf of the beneficiary. The director noted that there is no evidence in the record that a Form I-130 petition had been filed on behalf of the beneficiary. The director, therefore, advised the petitioner that if he had not filed an I-130, he may wish to withdraw the I-129F petition and file an I-130 petition in order to classify the beneficiary as the spouse of a United States citizen.

Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), states, in part, that an alien who—

> (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to

> enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa....

8 C.F.R. § 214.2(k)(7) provides, in part:

> To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

The Form I-129F petition was filed with the Service on February 3, 2002. The petitioner, on appeal, submits evidence that a Form I-130 immigrant visa petition was subsequently filed on May 22, 2002, on behalf of the beneficiary. The petitioner's spouse, however, was not the beneficiary of an I-130 visa petition at the time the Form I-129F was filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

This decision is without prejudice to the filing of a new petition (Form I-129F) now that a Form I-130 petition has been filed on behalf of the petitioner.

ORDER: The appeal is dismissed.